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TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL
FILE

IN THE MATTER OF:

MM DOCKET NO. 92-187

FAMILY STATIONS, INC.
Channel 215B1
Bakersfield, CA

DATE OF CONFERENCE: October 19, 1992

VOLUME: I

PLACE OF CONFERENCE: Washington, D.C. 20554

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D.C. Area 261-1902
Balt. & Annap. 974-0947

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OFFICE OF THE
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In the matter of:

FAMILY STATIONS INC.
Channel 215B1
Bakersfield, CA

MM Docket No. 92-187

The above-entitled matter come on for pre-hearing conference pursuant to Notice before Judge Joseph Stirmer, Chief Administrative Law Judge, and Judge Edward Luton, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No. 4, on Monday, October 19, 1992, at 9:30 a.m.

APPEARANCES:

On behalf of Family Stations, Inc.:

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Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Washington, D.C. 20037

On behalf of Shepherd Communications, Inc.

JOHN K. HANE
Fisher, Wayland, Cooper, and Leader
1255 23rd Street, N.W., Suite 800
Washington, D.C. 20037

On behalf of the Mass Media Bureau:

GARY P. SCHONMAN
2025 M Street, N.W., Suite 7212
Washington, D.C. 20554

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25	Conference Began: 9:30 a.m.	Conference Ended: 9:50 a.m.

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P R O C E E D I N G S

1
2 JUDGE STIRMER: Good morning. This is a pre-
3 hearing conference of Docket Number 92-187, involving
4 mutually-exclusive applications of Family Stations, Inc.,
5 Shepherd Communications, Inc., and Skyride Unlimited,
6 Incorporated. This case was designated for hearing by order
7 released August 19, 1992. In an order by the Chief
8 Administrative Law Judge, Judge Edward Luton was designated to
9 preside. However, in view of extraordinary traffic
10 conditions, Judge Luton has not been able to come to work at
11 this hour, and therefore I am sitting in at this time in place
12 of Judge Luton. I am Judge Joseph Stirmer. Is there any
13 objection to that?

14 MR. HANE: No objection.

15 MR. HUTTON: No, sir.

16 MR. SCHONMAN: No, sir.

17 JUDGE STIRMER: All right. Let me first obtain the
18 appearances. For Family Stations, Inc.

19 MR. HUTTON: Thomas Hutton of Dow, Lohnes &
20 Albertson.

21 JUDGE STIRMER: For Shepherd Communications, Inc.

22 MR. HANE: John Hane of Fisher, Wayland, Cooper,
23 and Leader.

24 JUDGE STIRMER: For Skyride Unlimited,
25 Incorporated.

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1 MR. HANE: Your Honor, Skyride, I believe, prior to
2 hearing designation, filed a request for dismissal of its
3 application. It has not filed a notice of appearance. But I
4 don't think an order -- to my knowledge, an order dismissing
5 Skyride has not been entered.

6 JUDGE STIRMER: Very well, but in any event, it
7 doesn't appear that that applicant is going to participate in
8 this proceeding. All right, for the Bureau.

9 MR. SCHONMAN: Good morning, Your Honor. My name
10 is Gary P. Schonman. I am appearing here on behalf of
11 Paulette Layden, who is counsel of record for the -- Mass
12 Media Bureau.

13 JUDGE STIRMER: Very well. In all likelihood, it
14 appears that this will be a two-party case involving Family
15 Stations and Shepherd Communications, Inc. Now, has, has any
16 effort been made to, to settle this proceeding up to this
17 point?

18 MR. HUTTON: Yes, Your Honor, I'd like to speak to
19 that.

20 JUDGE STIRMER: Very well, please do, Mr. Hutton.

21 MR. HUTTON: On September 25, 1992, the parties
22 filed a joint motion to suspend procedural dates, indicating
23 that they contemplated a technical resolution to the
24 proceeding that would allow both of the mutually-exclusive
25 applications to be granted following a technical amendment to

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1 one of the applications. And my understanding is that the
2 Family Stations' application would be amended by changing the
3 channel and locating a different transmitter site. And the
4 status of that is that we have, the applicant has done the
5 work necessary to locate an area in which a new transmitter
6 site would be available, based on the new channel. And there
7 are two existing towers in that area. One of the towers is
8 available to the applicant. The applicant is checking on the
9 availability of the second tower and then we'll do an analysis
10 of which is the preferable tower. So progress is being made
11 towards settlement, and based on that, we would like to have
12 the joint motion to suspend procedural dates granted subject
13 to monthly reports by the parties.

14 JUDGE STIRMER: Well, now, when was that filed?

15 MR. HUTTON: September 25th.

16 JUDGE STIRMER: And has Judge Luton acted upon
17 that?

18 MR. HUTTON: No. My understanding is that the main
19 purpose of this conference today was to find out exactly what
20 was the progress towards settlement, and to see what
21 assurances could be made that, that settlement was, settlement
22 actually proceeding. And that was the point of my report.

23 JUDGE STIRMER: What, what's your position,
24 Mr. Hane?

25 MR. HANE: I concur with everything Mr. Hutton

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1 said.

2 JUDGE STIRMER: All right, now what --

3 MR. HANE: That --

4 JUDGE STIRMER: Let me ask you this. Have you
5 entered into an actual agreement as of this moment?

6 MR. HUTTON: No.

7 JUDGE STIRMER: What is the status of the
8 engineering work that's being undertaken?

9 MR. HUTTON: As of Friday we were told that they
10 still needed to check on the availability of the second site,
11 and the reason they wanted to do a comparison of the two
12 possible alternative sites was that there had been some FM
13 stations located on the first tower, which had space
14 available, but those FM stations had relocated to the second
15 tower. And so the applicant was concerned that there might
16 be, there might be a disadvantage if they tried to operate
17 from that first tower. So they're going to, they wanted to do
18 an analysis of whether or not space was available on the
19 second tower, and if so, whether that would be a preferable
20 site.

21 JUDGE STIRMER: What, what is the proximity of one
22 tower to the other?

23 MR. HUTTON: I don't know the answer to that.

24 JUDGE STIRMER: Well, to obtain permission to use
25 the tower would seem, would not be a very arduous undertaking.

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1 All you have to do is locate the individual who has control of
2 the tower and make a phone call or write a letter or, or get,
3 get his consent to use it. I don't understand why that should
4 take any extended period of time.

5 MR. HUTTON: I don't anticipate that it will.

6 JUDGE STIRMER: All right. Now, we have a hearing
7 date set for January 4th. Can we maintain that hearing date
8 in the event something goes awry in this arrangement that you
9 think you can accomplish mainly be amending and having it
10 placed in a posture where both of you all can get granted? I
11 mean, what dates do you want suspended?

12 MR. HANE: Well, primarily, Your Honor, if I can
13 speak to that, discovery dates. We, we're not sure to what
14 extent the new procedural rules apply to this case, because of
15 they were sort of designed, if you, if you read them, when I
16 read all those orders with, with this case in mind, they were
17 basically designed around the standard comparative issue,
18 which, which does not exist in this case. If this case were
19 to go forward, it, it would be rather complicated. You have a
20 307B issue, you have a time-sharing issue, and there's a
21 serious dearth of law as to really what's considered under
22 those issues. There are only between six and a dozen cases
23 that ever went to hearing on this. So the primary thing we
24 want to avoid is undertaking discovery. If it did become
25 necessary to try this case, we, we would need some time for

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1 | discovery and, and to put witnesses together for the hearing.

2 | JUDGE STIRMER: Judge Luton, come in. We just got
3 | started, so if you'll get your robe and come in, or -- I've
4 | just begun this conference in your absence.

5 | JUDGE LUTON: Why don't you go ahead and finish it.

6 | JUDGE STIRMER: Pardon?

7 | JUDGE LUTON: Go ahead and finish it.

8 | JUDGE STIRMER: Well, I think perhaps you should
9 | step in. We just got started, and we're discussing the --

10 | JUDGE LUTON: All right.

11 | JUDGE STIRMER: -- the joint petition to suspend or
12 | to adjust the, the dates.

13 | JUDGE LUTON: Okay. That's what I want to talk
14 | about.

15 | JUDGE STIRMER: Okay --

16 | JUDGE LUTON: -- apologize. It's incredible
17 | traffic.

18 | JUDGE STIRMER: That's what I thought was, was the
19 | reason for your inability to get, get here, and I stated that.
20 | In your absence, we just got started.

21 | JUDGE LUTON: I appreciate that.

22 | JUDGE STIRMER: So I will turn the conference over
23 | to you, Judge Luton.

24 | JUDGE LUTON: Thank you.

25 | JUDGE STIRMER: All right, and thank you. I guess

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1 Judge Luton would be the appropriate judge to fully consider
2 your request to suspend whatever dates you want to suspend.
3 All right. I appreciate your indulgence, and unfortunately in
4 this area, sometimes we get traffic problems that none of us
5 can anticipate or overcome, for that matter. So I will leave
6 now, and Judge Luton will continue with, with the conference.

7 MR. HUTTON: We appreciate your efforts in moving
8 things forward here.

9 MR. HANE: Yeah.

10 JUDGE STIRMER: All right.

11 MR. HANE: Thank you.

12 JUDGE STIRMER: Thank you.

13 (Off the record.)

14 JUDGE LUTON: Thank you, and again I apologize for
15 wasting everybody's time, but it really couldn't be helped.
16 Judge Stirmer told me that the appearances had been noted,
17 that some discussion has taken place and he explained it to
18 me. Let's see if I understand it. Skyride Unlimited,
19 Incorporated hasn't been heard from or if it has been heard
20 from, it's requested that its application be dismissed.
21 Family Stations and Shepherd will be the two remaining
22 applicants. Family Stations proposes to amend its application
23 to change to another site and channel. The only thing that
24 remains is that there are two possibilities, as I understand
25 it. Permission to use either one has not yet been obtained.

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1 Assuming that a site change is made, Family Stations will,
2 will amend so that the mutual exclusivity will be removed, and
3 then both applications can be granted. Is that the way it's,
4 we're looking at it?

5 MR. HUTTON: Just --

6 JUDGE LUTON: Yes, sir.

7 MR. HUTTON: -- one minor modification of that.

8 JUDGE LUTON: All right.

9 MR. HUTTON: My understanding is that of the two
10 possible sites available to Family Stations, one -- for one of
11 them, site availability has been obtained for Family Stations.
12 They're, they're simply checking on the availability of the
13 second site, and then deciding which of the two sites would be
14 preferable.

15 JUDGE LUTON: Oh, I see.

16 MR. HUTTON: So --

17 JUDGE LUTON: That's even better.

18 MR. HUTTON: Yeah.

19 JUDGE LUTON: All right, thank you. I understand
20 also that there's been a request that discovery be suspended
21 and really that all procedural action in this case just be
22 brought to a halt since the parties are rather confident that
23 they're going to be able to settle this case. The reason that
24 I didn't act on this joint motion earlier is because of the
25 long period of time that, for which suspension or postponement

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1 is requested, all the way to December 23, 1992. The
2 Commission has taken to, as we all know, taken to concerning
3 itself now more with the time by which these proceedings are
4 completed. I was and continue to be somewhat hesitant about
5 suspending for the long period that's requested in the absence
6 of some assurances, as much as the parties are able to give
7 me, that we will in fact settle this case within that time, by
8 December 23rd. Are we reasonably confident that's going to
9 happen?

10 MR. HANE: Your Honor, I think if it can be done,
11 if it can be settled from a technical standpoint, I don't
12 think there's, there's any objection at all with my client --
13 and it's my understanding with, with Family Stations --
14 against the settlement. I think that's a happy ending for
15 everybody if it's technically feasible.

16 JUDGE LUTON: All right.

17 MR. HANE: It seems to be technically feasible, so
18 I, I don't see any problem.

19 JUDGE LUTON: All right.

20 MR. HUTTON: I also am confident that the
21 settlement can be worked out by that time.

22 JUDGE LUTON: All right. Well, if that, that's
23 good enough for me. Particularly in a case such as this,
24 settlements are encouraged. As we know, there isn't much law
25 in this kind of case, and if they go to hearing and decision,

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1 they, they usually aren't satisfactory to anybody, to anybody.
2 So settle it by all means, if we're able to. So I'm going to
3 grant the joint motion to suspend procedural dates. I will
4 issue a writing, up to and including December 23, 1992, that's
5 about 90 days. I will not set procedural dates on the
6 assumption and in the hope that such dates will not be
7 necessary. Yes, sir.

8 MR. HUTTON: Just one additional thing. I didn't
9 think this was appropriate to ask of Judge Stirmer, because he
10 wasn't --

11 JUDGE LUTON: All right.

12 MR. HUTTON: -- particularly familiar with the
13 case. I, I would move for the dismissal of the Skyride
14 Unlimited application based on their prior motion to dismiss
15 their application which has not been, as I understand it,
16 acted on.

17 JUDGE LUTON: Haven't seen it. Are they --

18 MR. HUTTON: As I understand it, they filed it
19 before designation, perhaps in the period between adoption of
20 the HDL and release of the HDL.

21 JUDGE LUTON: All right. Or it might be in my
22 office. I simply haven't seen it. I don't think it is,
23 though, I would have seen it. Let me catch up with that. I
24 will not act on that motion right now but if I'm able to
25 determine that you're correct in what you say, and I really

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1 don't have any reason to doubt it, we'll get rid of Skyride --

2 MR. HANE: Your Honor, I could also add that they
3 did not file a notice of appearance.

4 JUDGE LUTON: All right. That'll be fine, we can
5 remain confident that Skyride will leave the case. But I
6 don't want to do it at this moment, based on my lack of
7 knowledge about Skyride's exact situation. Is there anything
8 else?

9 MR. HUTTON: No, sir.

10 JUDGE LUTON: Thank you very much. And again, I
11 apologize, but thank you for your patience.

12 (Whereupon the conference was closed.)
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FAMILY STATIONS, INC.

Name of Hearing

92-187

MM Docket No.

Washington, D.C.

Place of Hearing

October 19, 1992

Date of Hearing

We, the undersigned, do hereby certify that the foregoing pages, numbers 1 through 13, inclusive, are the true, accurate and complete transcript prepared from the reporting by Barbara Lord in attendance at the above identified hearing, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the hearing and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the hearing or conference.

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